



U.S. Department of Justice

Executive Office for Immigration Review

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January 23, 2001

SORIANO REGULATION - QUESTIONS AND ANSWERS

The enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) barred many criminal aliens in deportation proceedings from applying for a waiver of their deportability under section 212(c) of the Immigration and Nationality Act. This bar to relief was interpreted by the Attorney General in *Matter of Soriano* to apply to criminal aliens who had already applied for relief under section 212(c) when the law was enacted but had not had a final decision made in their case. Many federal courts disagreed with this interpretation, and ruled that the bar to relief did not apply to criminal aliens whose deportation proceedings had already begun when the law was enacted.

The Attorney General has decided to acquiesce in a more uniform interpretation of AEDPA, in compliance with the circuit courts of appeal that have ruled on this issue. To accomplish this, a final regulation was published on January 22, 2001. It is often referred to as the *Soriano* regulation. In addition to stating that AEDPA's bar to relief did not apply to aliens whose deportation proceedings had already begun when the law was enacted, the Attorney General recognized that many people had already had their claims to section 212(c) relief denied under the *Soriano* decision, and could no longer benefit from the change in law because their 90-day period for filing a motion to reopen had expired.

To assist these people, the new regulation allows them to file a special motion. It is known as a "Special 212(c) Motion," and it is not subject to the usual time and number limitations on motions. However, it must be filed on or before July 23, 2001. The public may have questions about these special motions. You will find below a list of anticipated questions and answers.

You should also always refer to the regulation that gives details on who is eligible and how to benefit from the new law. The regulation was published in the Federal Register on January 22, 2001 at [66 FR 6436](#), and will be codified in the Code of Federal Regulations at 8 C.F.R. § 3.44 and 212.3(g).

Questions

1. Am I eligible to benefit from the new law and the Special 212(c) Motion?

- If you are unsure you should consult an attorney. The eligibility rules are also set out in the regulation.

2. A final decision has already been made in my case. Where should I file my Special 212(c) Motion?

- You should file your motion with the Board if the Board was the last to issue a decision in your case.
- You should file your motion with the Immigration Court if the Court was the last to issue a decision in your case.

3. I have already filed a motion to reopen with the Board (or appealed from an IJ denial of a motion). Do I still have to file a Special 212(c) motion to benefit from the new law?

- It depends. You do not have to file a Special 212(c) Motion if you have already filed a motion to reopen or reconsider that specifically requested section 212(c) relief. However, you should make sure that your already pending motion includes your 212(c) application and gives evidence to establish eligibility. If you think it may not, you may want to supplement your previous motion.
- You must file a Special 212(c) Motion if your already pending motion does not ask for relief under section 212(c). The Special 212(c) Motion should specify what other motions you have pending before the Board.

4. The Board has not yet made a decision in my appeal of an Immigration Judge's decision ordering me deported. Do I need to file a Special 212(c) Motion?

- No. Special 212(c) Motions are only needed by people who have a final order of deportation in their case. Because of your appeal, the Immigration Judge's order is not final.
- However, if your appeal does not concern an application for relief under section 212(c), you should file a motion to remand with the Board to apply for this relief if you believe you are eligible. The motion to remand should include an application for section 212(c) relief and evidence showing your eligibility.
- Even if your appeal does concern section 212(c) relief, you are encouraged to file a motion to remand because of the change in the law.

5. Is there a deadline for filing a Special 212(c) Motion?

- Yes. The regulations currently provide that the special motion must be filed on or before July 23, 2001.

6. What should my Special 212(c) Motion include?

- The motion must set forth how you are eligible for section 212(c) relief under the new regulation.
- The motion should be accompanied by a copy of your previously filed 212(c) application (Form I-191) , with supporting documents, or a new 212(c) application with supporting documents. A new application must be filed if you have not previously filed an application with the Immigration Court or the Board, or should be filed if you wish to update an already filed application. The application and supporting documents should show your eligibility for section 212(c) relief.
- The motion must contain your certification that the motion has been served on the INS.
- The front page of the motion and any envelope containing the motion must include the notation: "Special 212(c) Motion."

7. Is there a fee that must be paid when filing the motion?

- No. There is no filing fee for a Special 212(c) Motion. The usual fee requirements for a motion to reopen have been waived, but only for this special motion.

8. I have a final order of deportation. Does filing the Special 212(c) Motion automatically stop the INS from deporting me?

- No. The mere filing of the motion does not stay the execution of the final order of deportation. However, you may ask the INS to stay your deportation by filing an Application for Stay of Removal (Form I-246).
- Also, if you are in the custody of the INS after filing your motion, you may also ask the Board to stay your deportation.

9. I am not in the United States (or I reentered illegally after being deported or I was not admitted or paroled into the United States)? May I still file a Special 212(c) Motion?

- No. The special reopening rule does not apply to: 1) aliens who have departed the United States; 2) aliens with a final order of deportation who have illegally returned to the United States; or 3) aliens who have not been admitted or paroled.